IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8402 OF 2003

Shri Nivrutti Sopana Khedekar ..Petitioner.

Versus

1. Shri Baburao Sopana Khedekar,
since deceased through heirs :
A. Shri Balaso B.Khedekar & Ors. ..Respondents.

Mr. Girish S. Godbole for the Petitioner.

Mr. Nitin Jamdar for the Respondents 1A to 1E.

Mr. A.H. Palekar,AGP for the Respondent No.2.

CORAM : S. A. BOBDE, J.

DATED : 22nd SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. Jamdar, Advocate, waives service of rule for the Respondents Nos.1A to 1E. Mr. Palekar, AGP waives service of rule for Respondent No.2. Heard by consent.

2. The petitioner has challenged the order dated 14.10.2003 at Exh. 'J'. By the said order, impugned

in this petition, the Dy. Director of Land Records, Pune has corrected the scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947; hereinafter referred to as 'the Act'.

3. Admittedly the scheme was finalised in the year 1967 and according to the joint statement submitted by the parties at Exh.'C' to this petition, the respondent appears to have applied for variation of the scheme, interalia, on the ground that the petitioner has received greater area than was due to him. This application was made after a lapse of 26 years, some time in the year, 1993.

4. Mr. Godble, the learned counsel for the petitioner submits that the variation after such a long gap has been held to be illegal by the judgment of the division bench of this court in Gulabrao Bhaurao Kakade vs. Nivrutti Krishna Bhilare & Ors., 2001(4) Mh. L.J. 31.

5. Mr. Jamdar, learned counsel for the respondents, however, submits that the facts of the present case are different and it is not as if an

application for variation has been made after a period of 26 years. In fact according to the learned counsel variation applications have been made by the respondents in the intervening period to point out to the authorities that the scheme has not been acted upon properly and therefore, in fact, had never came into force under section 22 of the Act, which reads as follows:-

> "22. As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force."

6. The learned counsel for the respondents relied upon the communication dated 17.7.1997 annexed to the reply of respondent No. 1A. It does appear from the said communication that there is a statement to the effect that the parties have not been put in possession according to the scheme. Therefore, the contention raised on behalf of the respondents is plausible. Indeed there may have certain proceedings in which the respondents may have objected to the

effect that the scheme has not come into force since it has not been acted upon properly. However, it is not possible to render any finding on this aspect of the matter in view of the cryptic nature of the impugned order, which does not discuss this aspect either. In fact it does not discuss any other aspect except that it states that the scheme has been varied.

7. In the circumstances, I am of view that the impugned order deserves to be set aside and is hereby set aside. The matter is remanded back to the respondent No.2 - Dy. Director of Land Records for fresh decision in accordance with law. In the circumstances of this case, it would be appropriate to direct the respondent No.2 to give a personal hearing to the parties.

8. All contentions on merits are left open. The parties shall be at liberty to adduce such evidence and advance such contentions as may be advised.

9. Rule is disposed off in the above terms.

DT.22.09.05 (S.A.BOBDE,J)

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